EXHIBIT B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HONORABLE ANTHONY J. BATTAGLIA, JUDGE PRESIDING

IN RE INCRETIN-BASED THERAPIES PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO ALL CASES

Reporter's Transcript of Proceedings
Status Conference

Appearances:

For the Plaintiffs:

RYAN THOMPSON
TOR HOERMAN
HUNTER J. SHKOLNIK
MIKE JOHNSON
MAX KENNERLY
KEN PEARSON
GAYLE M. BLATT
LIBERTY EDWARDS

For the Defendant Novo Nordisk:

HEIDI LEVINE
LEEANNE NERI
CHRISTOPHER YOUNG

For the Defendant Eli Lilly And Company:

NINA GUSSACK
KENNETH KING

For the Defendant Amylin Pharmaceuticals LLC:

RICHARD GOETZ
HOUMAN EHSAN

Appearances cont'd

For The Defendant Merck:

DOUGLAS MARVIN
PAUL BOEHM
ANA REYES
VICKIE TURNER

For the Defendant Eli Lilly And Company:

STEVE SWINTON
GEORGE LEHNER

COURT REPORTER: Dana Peabody
501 W. Broadway, Suite A236
San Diego, CA 92101
619.520.4914
danapeabodycsr@gmail.com

San Diego, California, February 18, 2014

THE CLERK: Number 1 on calendar, 13-MD-2452, In Re Incretin Mimetics Products Liability Litigation on for status conference.

THE COURT: Well, good morning, all. I think what I'll do in the interest of expediency is from the list that was created just identify who all is here, and then if someone comes in late, they can speak up, and we can add them to the list.

And the list for no particular reason starts with defense counsel, so let me start there.

We've got Heidi Levine for Novo Nordisk, Nina Gussack and Kenneth King for Eli Lilly, Richard Goetz for Amylin Pharmaceutical, Douglas Marvin, Paul Boehm, Ana Reyes, and Vickie Turner for Merck, George Lehner for Eli Lilly, Houman Ehsan for Amylin Pharmaceuticals, Leeane Neri for Novo Nordisk, Christopher Young for Novo Nordisk, Steve Swinton for Eli Lilly Company.

Any other defense folk that I've missed? Nobody speaks up, so that's good.

For the plaintiffs Ryan Thompson, Tor Hoerman, Hunter Shkolnik, Mike Johnson, Max Kennerly, Ken Pearson, Gayle Blatt, Liberty Edwards.

Did I miss anybody?

MR. SHKOLNIK: That's all, Your Honor.

THE COURT: Okay, great.

So we're here for status case management, and I have spent many hours going through your submissions and considered them very carefully, and I have questions I don't think either of you will like. I have a hybrid situation in mind, but it's dependent upon the answer to some questions.

Now, let me address this to the defense first. The plaintiffs are saying that they don't have the benefit of all discovery, in particular the clinical trial information, so they can test in a sense the bona fides of all that body of data with regard to a potential causative link between the drugs and pancreatic cancer. And that concerns me because if that is true, it would seem that the defense is suggesting we take their word for the essence of the results of the data and challenge the plaintiffs' proposition on that basis alone.

So -- and you can pick who you want to have address it, folks, but I mean is it true that not all clinical information has been made available?

And Ms. Gussack.

MS. GUSSACK: Thank you, Your Honor.

No, that's not true, although it's not complete, so let me go back a step and say all of the defendants have produced their Investigational New Drug and New Drug Applications, and those are the regulatory submissions that the pharmaceutical manufacturers make to FDA to support the preclinical, the animal testing, and the clinical trials testing done in humans. And just speaking for the Byetta defendants, I can tell you in our IND/NDA production the plaintiffs have at their disposal data from 58 completed clinical trials, 47 final clinical study reports, 88 clinical study protocols, much toxicology animal data, adverse event reports, compilations of periodic safety update reports, and all of the communications to and from FDA about Byetta.

In addition, for Byetta defendants, Your Honor, the plaintiffs have had the benefit of both the production that was made in the JCCP, which was 4.5 million documents, and then an additional 2 million documents which come from key custodians who are involved in safety, regulatory, medical -- did I say documents? I meant pages. Pages. 6.5 million pages. And these custodians are in the core areas where clinical trial data would be

discussed, evaluated, and being commented on.

But I think it's fair to say, Your Honor, from the defendants' perspective, speaking a little bit more broadly, it is not the defendants' view that general causation is now ready to be heard because all discovery is concluded. The defendants fully contemplated that some additional discovery that could be defined by some reasonable scope should occur and that the critical issue that the defendants are advancing here, Your Honor, is that the priority in the case management order should be directed towards the issue of whether these agents are capable of causing pancreatic cancer as opposed to leaving it to the end of the path.

THE COURT: Okay. And what don't they have then -- if you were on the plaintiffs' side, what would you be asking that they haven't gotten in this litany of data? Is there anything else is the question.

MS. GUSSACK: Well, Your Honor, I would say that as a plaintiff, looking to frame this issue, both cost effectively and with targeted focus on the science, I would both evaluate that I had the clinical trial data, I have access to an enormous amount of published data, and I might then in a

focused way ask for -- to confirm that I had the full array of studies and analyses of ongoing studies. There may well be some reasonable additional information.

I have to say, Your Honor, of all the questions I could have anticipated, asking me to be a plaintiff for the day was not one of them, but I will, putting on their hat for a moment, recognize that there is some -- I'm sure some additional scope that they could test, and, in fact, questions could be asked really quite narrowly, which is do you have any data that demonstrates, supports that the incretin-based medicines caused pancreatic cancer.

But I think that what we are faced with right now is extremely broad-based discovery. Nonetheless, the parties have been responding and continue to respond to discovery requests.

THE COURT: Okay. And so that's where we stand with Lilly.

Ms. Levine, how about with Novo Nordisk?

MS. LEVINE: Thank you.

We agree wholeheartedly with Ms. Gussack's statements. Similarly, the Novo Nordisk defendant has produced its initial drug application and New Drug Application, which is more than 1.4 million

pages of data. It includes 209 preclinical or animal studies, 54 clinical studies, and all of the communications with the FDA, but we are in the process of speaking with the plaintiffs, in fact meeting with them this afternoon, to discuss the parameters of additional discovery. And you've asked that question, and I'll address it, which is we've prepared a study chart that includes all of the completed and ongoing clinical and nonclinical trials for the plaintiffs, which is probably more than we had to do, protocols, final study reports, raw data sets to be discussed in a meet and confer, adverse event reports.

As you can imagine, Novo, who got into the litigation several months later than some of the other defendants and are a little bit later in the production of adverse event reports, but we are in the process with our client of obtaining them, making productions, and having very productive and fruitful discussions with plaintiffs, SOPs and other things that plaintiffs may ask for. We're absolutely ready and willing to produce additional discovery. We think that it is reasonable for plaintiffs to ask for additional discovery, but what we want is to have a general fact -- a general

causation fact discovery cutoff that addresses these key issues up front to encourage the plaintiffs to focus on what the real general causation discovery issues that they need rather than dealing with all of the other types of fact discovery that one might see in a typical MDL, which this is not.

THE COURT: Okay. All right. Well, thank you.

And how about Mr. Goetz and Amylin?

MR. GOETZ: Thank you, Your Honor.

Amylin and Lilly jointly produced much as what Ms. Gussack said would apply to Amylin as well. We've offered to produce additional materials. There are some costs associated with that that I'm not sure that plaintiffs want to invest to make copies of some slides, but we've made that offer back in October. Dr. Ehsan behind me can answer questions if that comes up.

A lot of the recent discovery has focused on things other than what Your Honor raised. Not clinical studies, but, "Can you give me backup data on adverse event reports so that I can see if you properly coded a pancreatic cancer case or not?" And we've been responsive on that. We've produced two witnesses last week who were deposed for seven hours. 15 witnesses were deposed on those subjects

in the JCCP proceedings. And last year we gave the plaintiffs in these proceedings an index that showed by line and page number where those witnesses testified about adverse event reports.

The one thing those 15 witnesses have in common is that after Bristol Myers acquired Amylin and moved most people to New Jersey, those people decided to stay in Southern California. I can tell you trying to get out of Newark airport last week, I understand why, but they don't work for us anymore, and so we're trying to get a supplemental witness who can testify about adverse event reports prior to April of 2013 when Bristol Myers took over handling those, and we committed that we will.

That's going to require us to find somebody who's willing and able to testify, but the focus hasn't been recently on the clinical studies because I think they have what they need on that, and we're willing to produce additional documents and supplements and updates as necessary, but we agree with both Ms. Levine and Ms. Gussack that we ought to move this to the forward of this general causation issue.

THE COURT: And then Mr. Marvin for Merck.

MR. MARVIN: Good morning, Your Honor.

Ten months ago, last April, Merck produced over 382,000 pages plus 2.29 gigabytes of data. I'm not really sure what a gigabyte is, but I know --

THE COURT: It's a lot.

MR. MARVIN: -- it means "giant" in Greek.

And as part of that production, it means that we've produced preclinical studies -- over 85 preclinical studies, more than 100 clinical studies. That's also included protocols, investigators' brochures describing the safety profile, statements of the investigators, safety reports. We've also produced the adverse event reports that are provided to the FDA on the MedWatch forms that they require. On observational studies, the plaintiffs have the Eurich study, which included over 8,000 Januvia patients, and the Gokhale study, which was over 100,000 patients, about 30,000 which were taking DPP-4s, and we've produced the regulatory file which includes the labeling history, and the correspondence with the FDA for more than 12 years.

Your Honor, when we were considering the production, we purposefully looked at what it is that scientists really look at in making these determinations about the causation, and that's why we produced this information more than ten months

ago. It was for that very purpose.

So I join with my colleagues in saying that the studies and the type of information that scientists look at has been produced, and if there's something else out there that's targeted that the plaintiffs want, then we're happy to talk to them about providing that.

THE COURT: Okay. Well, let me then turn to the plaintiffs' side, and you can pick your initial spokesperson. If you want to have somebody supplement, you may, but it sounds like you have a lot of data and focus on this issue of general causation, this clinical information, so forth. Other than maybe some discussion of backup data for the adverse reports or something else of a small degree or other degree or reproduction and the cost of reproduction of slides, what else do you need for that particular issue? Anybody?

MR. JOHNSON: Your Honor, good morning. Mike Johnson on behalf of the plaintiffs.

THE COURT: Thanks, Mr. Johnson. Go ahead.

MR. JOHNSON: Thank you.

Your Honor, I'm chair of the discovery committee, and if I can docket this issue for a moment. It is true at the moment the defendants

have given us some production, and they have told us that they have given us their INDA and their NDA. What we have not yet heard from them is that it is a -- that it is a complete production. And in fact, we've gotten a letter from -- as recent as last week from Amylin with respect to some of the information that they've given to the FDA and said, "You know what? We're not positive what we've given you today is" -- and this is with respect to the adverse event reporting -- "we aren't exactly certain if this is everything we have or not. We need to go back and take a closer look at it."

So two things. Not only have the defendants not told us that their production has been complete yet, but second, they don't seem to yet know if their production is complete.

But beyond that I want to just talk a little bit about where we've been in discovery because I think that there's a little broader issue here than just the IND and the NDA.

As Your Honor may know, a lot of times these cases turn on not what was given to the FDA, but what was not given to the FDA. And what we haven't had yet is an opportunity to test what they have given us.

So, for example, we've gone through some of the documents that they've given us, and we were told on Science Day that there was no signal for pancreatic cancer in any of the early clinical trials.

Well, as we've gone through some of the documents, we have found cases of folks who were in their clinical trials that developed pancreatic cancer that were -- that appeared to be excluded. We need to test that in discovery. "What exactly -- so we have your INDA and we have your NDA, but what exactly were the parameters for your clinical and your preclinical trials? In other words, how did you decide who got excluded and who didn't?"

And when we're talking about a case that involves pancreatic cancer with a very low incidence rate, one or two proper exclusions can very quickly shift the incidence rate and make a signal look much bigger.

And right now, Your Honor, what they're really doing is they're saying, "Hey, look. We're telling you what we've given the FDA. That's enough to do your job."

And what we're saying, Your Honor, is, "We need to figure out what wasn't given to the FDA, and

we need to test what it is you've given to the FDA."

THE COURT: As far as these parameters, these 15 or so depositions that were taken, they didn't address that aspect or that question? They were more specific to data, period?

MR. JOHNSON: Yes. And to be clear, there weren't 15 depositions taken in this case. There have only been three.

THE COURT: But the sum total of the depositions that have been taken to date didn't touch on how you decided who is in and who's out?

MR. JOHNSON: Your Honor, those depositions, if you'll recall, are from the JCCP, and they dealt with pancreatitis and not pancreatic cancer. And so to the best of my knowledge, those specific questions were not addressed.

And so if I could just step back a moment, Your Honor, I just want to talk about where we are in the big scope of discovery because if you were to listen to the defendants, you would think, "Well, my gosh, they really have -- you know, they really have given us a lot here."

But when the MDL was formed in this case, Your Honor, what we did is we took all the pre-MDL discovery, and we condensed it into a few different

sets so that we had just a couple workable sets for everybody to work off of. We started serving those sets in November.

Around December we got a phone call, and they said, "Hey, the holiday's coming up. What we would really like is an extension until after the holidays." And we said -- "to answer." And we said, "That is not a problem." We gave all the defendants an extension until mid-January to answer, and for the first time when we received their answers we were told, "Guess what? You're not getting any answers. What you're going to get is you're going to get absolute blanket objections, and we're objecting because we think that you have asked too many questions." We've negotiated for the last four to six weeks on limitations with respect to written discovery, and the CMO was introduced -- or excuse me, was filed for your signature this morning that limits and sets the limits on discoveries.

With that agreement in place, Your Honor, the defendants served their answers to interrogatories for the first time on Friday and their answers to requests for productions this Monday.

And just to give you -- I want to give you

a very micro example of what we've received so far, and then I'll give you a macro example.

You heard a lot in Science Day that the EMA is one of the things that makes this case unique from other cases. We asked them a question in our discovery, and we said, "Hey, tell us about your interactions with the EMA. What did you provide them? Was anybody from your company on their panel?"

What they told us, Your Honor, is, "We're not going to answer that. The EMAs are irrelevant to this case, and it's not reasonably calculated to lead to admissible discovery."

And that, I think, is just the most poignant example of what it is that we're sort of dealing with at this point.

And so let's talk about this from a macro perspective. And I'm going to talk about Novo for just a minute, not to pick on them, not to single them out, but only because they kind of took the lead on the discovery issues for the defendants.

Of the 54 interrogatories, 16 of them -- or 30 percent of them their answer was, "We'll answer later." 15 of the 54, which is 28 percent, there's a complete objection and a refusal to answer. 23 of

them, which is 43 percent, there's a partial answer, which is -- with just a handful of complete -- with just a handful of what we think are complete answers, but we haven't had a chance yet to sit down and meet and confer.

So Your Honor, we're just at the very tip of the iceberg in terms of getting the discovery in this case to figure out what is it they didn't give the FDA and can we test what it is they claim that they've given the FDA today.

THE COURT: Okay. And then while I've got you at the podium, that begs the next question, although I'll give the defense a chance to respond to this -- don't get nervous -- but as far as -- I mean in my view, frankly, we ought to get to the bottom of the general causation issue and focus the resources and the time on that and leave for shortly thereafter these other noncausation-related issues or issues specific to any particular bellwether questions with regard to misrepresentation or so forth, representation, misrepresentation, and why is it the plaintiffs don't see that either the cost savings or the economy in doing that? I mean we may end up at the end of the day there's a question of fact on general causation, and then we at least know that

and off we go. You might end up with one side or the other prevailing, and that opens up options. Why not focus it, as the defense urges -- and I'm not saying that they're right and you're wrong on the completeness of discovery. I'll hear from them on that, but why shouldn't we get to these essential questions, which cuts across the four drugs, and I'm assuming in that statement that there's no distinct difference in this issue between the GLP -- the GLP-1s and the DPP-4s. Maybe there is, but I'm assuming that we can deal with all of that. We put that issue either behind us or we know some jury's going to have to -- or series of jurors is going to have to decide that. Why does that make the plaintiffs uncomfortable when we talk about those kind of things? And I'm divorcing from that issues as to who is in, who is out, what was said or not said with regard to the clinical data and the FDA. We're talking about to the public and these other things that seem to be occupying a lot of your time right now and may, since they're going on concurrently, be slowing down the completeness of the causation-related discovery as they're about to throw up multiple balls in the air. That's a long question I know, but do your best with it.

MR. JOHNSON: Your Honor, ultimately we are comfortable getting into that decision. We think the science is there for us now, and we think the science is getting stronger. It's just an issue of timing and completeness, and all that we're asking, Your Honor, for is to give us the time to complete the discovery. And I don't really see it as a cost savings, and here's why. If you take their example -- and we have to have our expert reports done in April. Well, if you consider the lay of the land that I just gave Your Honor with respect to discovery, we're really not going to have a whole lot of foundational material to give to our experts, so we're going to give them our expert report that's lacking some foundation just because we haven't gotten it yet. And then as we get it, we're going to have to give it to our experts, and they're going to have to do an updated report. We're going to get additional discovery. We're going to have to give it to our experts. They'll have to do another updated report and so on and so on and so on, and I don't see the -- I think that's a false cost savings that they're trying to sell here. I think it's actually more work.

THE COURT: And I'm not focused so much on their

proposed dates. It's more their concept that we deal with the general causation and then move on.

So if we assume that their discovery becomes complete, then moving on to dealing with general causation, the Dauberts and summary judgments associated with that, and then stepping from there to complete all other generic discovery wouldn't be disadvantage to the plaintiffs as long as you have enough time on the front end to be able to give your experts a complete package. They can do a report for a deposition, and we can have a motion, right?

MR. JOHNSON: That's not necessarily accurate, Your Honor. Sometimes, for example, let's say we said, "Okay. Marketing is not part of the case. It's not part of the general causation story." Well, we all know from our experience in MDLs that oftentimes marketing, quote, unquote, runs science, and so sometimes we find our best documents in the marketing. And so, for example, we might find that there's a lot of chatter between marketing and the scientists going on about early signal detection and what that might mean with respect to a label, and in addition in this case, and I think that you heard in Science Day originally when these compounds were

discovered, the manufacturers thought that this was going to be an absolute cure for diabetes. Not just a treatment, but a cure. And so you have to imagine in this case that there is some discussion about these early science findings with the marketing department. My point is the departments are interrelated, and sometimes the best documents aren't necessarily just coming out of the science department.

THE COURT: I understand, but if we talk about completeness of the clinical and other scientific data is including signal detection related communications or documents, that would seem to get at the full on marketing plan, wouldn't it?

MR. SHKOLNIK: If I could add one point to help us clarify what is being suggested, we -- the defendants have -- and this is an issue that was brought before Judge Dembin -- sought and are looking to do extensive plaintiff-specific discovery. They want every plaintiff's fact sheet done in a timely fashion. They want all medical records. They want to do full bore, what I call, case-specific discovery, yet at the same time they're suggesting from the plaintiffs' side, "Focus your discovery just on general liability." It just

seems problematic that they want their cake and eat it too here.

THE COURT: But that's a good point.

MR. SHKOLNIK: And they fought hard and now tie our hands.

THE COURT: I understand that, but my question is maybe "general causation" is a bad term because it's vague, but I mean if we focus specifically on the science and the potential cause of pancreatic cancer or perhaps acceleration, who knows where this all goes based upon the use of these drugs, and we come to some either conclusion or the conclusion that there's a triable question of fact, we've come a long way in putting to bed probably the bigger -- one of the bigger parts of the cause, haven't we?

MR. KENNERLY: Max Kennerly, cochair of the law committee, which is why I thought I'd step in on this one. Our concern off of this is the practical implications of trying to divorce out general causation and discovery versus -- or science discovery, however you frame it, from everything else. Now, Your Honor, present for the first deposition, we had -- we were trying to find out communications with the FDA. We had numerous speaking objections, numerous instructions not to

answer. Of the little bit of information we got out of the representative from Merck, they couldn't tell us which department in there was actually responsible for reporting information to the FDA. And this is one of their own regulatory affairs officers.

This is the problem, Your Honor, is that if we -- if Your Honor -- and there's an order that says, "Well, we're going to do just science now, not stuff that's separate from science," then what we're going to have at every single deposition is a bunch of objections trying to push us in saying, "Well, this is science. That's not science." We're going to have this in our document requests. We're going to have this in our interrogatories. And what we know from these cases is this stuff all mixes together.

If we had looked at Merck back with Vioxx, the decisions to actually conceal this information about the trial studies didn't come from within the science department. It actually came from higher up, which then put the order back down telling them, you know, we're not going to go with that study, we're not going to approve it that way. We already see in patients in this and what we have from

available data -- we have documents from Amylin there's a 45-year-old man develops pancreatic cancer after taking Byetta for 791 days. He's kicked out of the trial for reflux. Now, who do we talk to about that? Is this a science question or a vigilance question? Would this run into the regulatory affairs if they were required to report it?

This is going to be the problem, Your Honor. We're already expecting to be here a lot. Long objections. We've received pretty much nothing but objections. The last deposition we did last week, the representative they produced said, "I'm not available to talk about anything prior to October 2013." Well, that's the bulk of the case is prior to that. Essentially every plaintiff who's filed took the drug before then, and so we're going to have huge problems with a big stream of objections that "That's not really science based, that's something else."

So that -- that's where we are on that, Your Honor. We're going to have disagreements, and I take an example from the defendants. They said, "Well, you know, why don't you ask us what we think we have in our file shows pancreatic cancer?" Well,

we know the answer. They're going to say, "Nothing does. Nothing shows pancreatic cancer."

From Merck they cited in the clinical trial summary the Engel study, which they said pooled together the trials and showed no pancreatic cancer. They left out Clinical Trial P28 where there was somebody with pancreatic cancer. Put that one back in there and completely change the statistics.

Here's our request: Are we going to be back in front of Your Honor or in front of Judge Dembin every week talking about whether something is science related or not science related?

THE COURT: And I appreciate that, and here the defendants tell it right now much of what you're dealing with is noncausation or general causation issues in terms of discovery requests. Is that fair? Is that a fair statement?

MR. KENNERLY: I wouldn't say so, Your Honor. I would say our requests are broad. The defendants themselves sought to severely limit the number of requests that we could have, so we have requests on the whole plethora of issues that could come out. That's what we're operating off of. That's what the case management order was. So to the extent we're asking other issues, well, yes, thus far we're under

a general scope of discovery.

In terms of what we've been trying to get more details out of, the types of depositions we've noticed, the types of depositions we've discussed with them, the focus of the ESI, this is -- there's a science basis on it, but, again, the question is how do you divorce the two from each other? What would change about the ESI? What would change about the depositions? What would change about the interrogatories? The good fair portion of our interrogatories are entirely based on science, but, again, the problem is we don't know what they have in their files, and they tell us they're not even sure what they have in their files, and so this is why we need to go where we can go. Otherwise we're going to be back here talking about this.

THE COURT: All right. Thanks.

Well, folks, you don't know if you're -- if it's complete. When are you going to know?

Ms. Gussack, I take it you're prepared to address that?

MS. GUSSACK: I'm prepared to address a couple of things, Your Honor, if I may.

One is that I want to go back a step and point out that in response to your request about

cost efficiencies and avoiding repetitive and duplicative discovery and hearings and decisions, the panel made this coordinated proceeding stating specifically in their order that "Plaintiffs in all actions allege that the use of one or more of four antidiabetic incretin-based medications, listing them, caused them or their decedent to develop pancreatic cancer. Centralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings, particularly on such matters as rulings, and conserve the resources of the parties, their counsel, and the judiciary."

And while the plaintiffs are suggesting, Your Honor, that this is an impossible situation and that objections are running amuck, I'm mindful of the fact that the plaintiffs have not gone to Judge Dembin saying that they've been obstructed or impeded or hindered. There's been an enormous amount of meeting and conferring, an enormous amount of document production. I think the parties are capable of identifying what the reasonable scope of scientific material is.

And while I can certainly be criticized for not being a good plaintiff's lawyer this morning, I think I can reasonably offer the Court some

assurances in response to what the plaintiffs are suggesting. The plaintiffs are suggesting that they need to have access to all of the internal email and files of the company from marketing to regulatory and the like in order to inform the central scientific issue here, whether these agents caused pancreatic cancer. And while it's -- I think it is worth the Court's time, Your Honor, to listen to this example of why I think that is so misguided. In the plaintiffs' brief that they filed with respect to their proposal around the case management order, they reference that defendant Lilly in their email files has an email in which their own researcher admits that their real concern is not whether their product causes cancer with the 14 percent, five-year survival rate even if caught immediately, but whether regulatory officials and the public might get wind of the risks of incretin-based therapies ruining sales of the whole family of drugs. And then they drop footnote 31 and they tell the Court, "We didn't attach this document, but it's available."

As counsel for Lilly I was very concerned. I thought, "I have never seen such a document, and that's a very strong statement." And so we dug out

the document. The document is a Dr. Anderson commenting on a media release about Januvia, not Byetta, in which there was -- I think the headline that if -- I want to be very -- the headline said, "Popular Diabetes Treatment Could Trigger Pancreatitis, Pancreatic Cancer." A media report. And Dr. Anderson's quote in her email is, "Dang, you beat me to it. If this gets a lot of play, the whole class of incretin-related drugs could be dead," which seems like a pretty fair statement that if this were true, that would be very problematic for this class of medicines.

Is that evidence of general causation? No. And the plaintiffs failed, unfortunately, to provide the email train that followed by four hours Dr. Anderson's comment that said, "Please ignore my comments of earlier. They were loose responding to a media report. They were not informed by the scientific data."

So one, if you're going to use emails as evidence or substitute for scientific data and the issue of general causation, you would not be looking at these kinds of emails nor do you need them to frame the issue.

I think the Court has raised the right

question. What is it that's needed, and how long should that take, and shouldn't that be the priority issue that all of the parties direct their energies to?

But to suggest that we need all of the emails in the company in order to demonstrate that there are issues around the science seems to be unfounded.

The parties are fully capable, I can assure Your Honor, of framing what discovery is needed in order to address this issue. A substantial amount of evidence is public. A substantial amount already exists in plaintiffs' hands. The answer to the question that was raised by counsel for the plaintiffs, "How do we know what the rules are of who is included in the study or excluded?" is in the protocol for the study, which is in the NDA, which is in their possession. If they have the depositions that they think they need to take in order to test or address the science, I'm confident that that can be done as well in a reasonable time period.

But I want to remind the Court that the plaintiffs sought the MDL that we currently participate in by stating to the panel that "We

anticipate that the experts that we need in these cases would all be the same, that they would be able to testify on behalf of each of the drugs, and so we think it's important to have them together in one court, so one judge has the ability to analyze the cases, analyze the experts, and to see whether or not those experts are allowed to testify." That's page 5 of the transcript before the panel with Mr. Thompson speaking. And I think equally important is that Mr. Thompson said to the panel in the argument, "Judge Battaglia has issued a very aggressive case management order in the Scott case, one in which, if it had been followed, expert disclosures would be due in ten days." Now, we recognize that Scott has been put to the side once the MDL was formed, but Mr. Thompson was arguing on behalf of plaintiffs. "These are terminally ill plaintiffs. They need to have their day in court, and we welcome an aggressive case management order." We too share a concern that sooner rather than later testing the central issue here is critical.

And to answer Mr. Shkolnik's comment about the case-specific plaintiffs, I do want to point out that terminally ill plaintiffs have in this litigation the unique ability and information about

their medical providers, their medical history, and the basic factual information we seek. And we do not have the luxury of delay around getting that basic factual information.

THE COURT: A couple other things. If you want to defer to one of your colleagues on the defense side, you can. But EMA is irrelevant?

MS. GUSSACK: No, Your Honor, I don't believe that's what -- at least Lilly's objection to the discovery was. The objection was to the extent you're asking about foreign regulatory proceedings, we don't think that's relevant, but we will respond to this discovery following our meet and confer, and I think the parties have agreed that objections would be framed first and that discovery responses would follow.

THE COURT: Because the EMA report we've heard a lot about in Science Days, and I take it that's the body of some of the science that somebody's going to be using one way or another in their expert analysis, so that stays true.

MS. GUSSACK: Certainly the report of the EMA and their conclusions has been -- is publicly available, and I believe the plaintiffs have, and you're quite right. We believe that their analysis

is irrelevant.

THE COURT: But the degree to which there is connection or involvement between any of the defendants or all of them and the EMA in terms of providing information, cooperation that resulted in that study, that would seem to be discovery relevant in terms of bias and the other studies, so I take it there would be no objection to responding to those questions fairly, would there?

MS. GUSSACK: Speaking for Lilly, I would agree.

THE COURT: Anybody else disagree on that particular note?

MR. MARVIN: No disagreement, Your Honor.

THE COURT: When from the defense perspective, or at least Lilly's perspective, will your responses to this about this key issue be complete? When can you certify its -- I know it's somewhat of a moving target because you're probably still getting adverse -- adverse what --

MS. GUSSACK: Event reports.

THE COURT: And so at some point we'd have to draw a line in the sand and say, "Okay. As of December 31st," or you all can pick a date, "that's where we close the book and then make sure it's complete to that point." You have to do that, but

when can we get to the point of saying from the defense perspective, and you all may have a different view, but from your perspective and Lilly, when can we say, "Well, we've given them everything reasonably after the diligent inquiry on all of our obligations in discovery"? It's not complete as of a precise date.

MS. GUSSACK: Your Honor, that's a multi-faceted answer. One is the New Drug Application is a living document. So that as we engage with FDA and provide them information, communicate with them, that is added to the New Drug Application. So if there are supplements since it was last produced to them, I think we should -- "Here's the cutoff date, and we will supplement up to that date." And it should be, at least from our perspective, that would seem to be the reasonable way one would do it.

The other component of your question, though, speaks to, I think, production from other sources beyond the regulatory materials.

THE COURT: Well, no, I'm talking in terms of Lilly being in a position to say, "Our responses to your discovery as of a certain date," or however you frame it, "are now complete, as complete as anything is in the world."

MS. GUSSACK: I think, Your Honor, if we had clarity about which custodians we had -- we were produced from and through what -- and cutoff date, I'm confident, from Lilly's perspective, that that's something that could be done within several months' time, so that we could assure ourselves that we had been exhaustive in our production.

THE COURT: And the last question I'll bother you with for the moment, and then I'll turn to the other defendants, is this issue about a marketing document talking about, "Well, with that signal detection, that's not good, and we aren't going to -- this needs to be dealt with in one way or another." How is that going to surface, in your view, of a restriction on defendants' obligation to respond to discovery as to general causation? Is that going to be something you feel would be responsive to a request that, say, you provide all documentation with regard to any signal detection that was excluded from the study? Is that going to be responsive?

MS. GUSSACK: Well, Your Honor, we think about these issues in terms of function of the employee, so that if the discovery request is to marketing -- marketing plans or marketing communications around

Byetta, that would retrieve a certain kind of likely marketing kinds of documents. I don't think we have, you know, a department of documents of marketing talking about signal detection so they can go to a file and say, "Let's produce that." I think the point is that if we prioritize the focus on where the likely information is that the plaintiffs believe they need to frame this issue, then we will be able to in a reasonable time frame focus in, and I would point out, and I think it's really the central issue, an email talking about whether a marketing person accurately described, you know, adverse event reports isn't a substitute for affirmative evidence that the plaintiffs need to demonstrate their proof of a causal connection between these medicines and pancreatic cancer. Emails will not substitute for that kind of scientific data.

THE COURT: No, but if there is an appropriate, focused question with regard to a factor in the general causation analysis, Lilly would be looking at it from the companywide standpoint or would you just be looking at it from the science room? I was hoping you'd be looking at it to the extent that it's practicable from a companywide standpoint.

Would you look for that information, whether it be in marketing or operations or in some other department? I would hope --

MS. GUSSACK: We have been looking across -- the discovery, I would say, has been very broad. We have attempted in some meet and confers that are ongoing to -- and I think even this week to engage in discussions that would allow us to target where we should be looking and what's a reasonable frame of reference to make those searches, but I don't think that there's any suggestion that we would be excluding one component of the company from making those kinds of searches for responsive information.

THE COURT: Okay. Well, moving to your right, Mr. Marvin.

MR. SHKOLNIK: Just one follow-up as it relates to Lilly alone, and I just want the record to be clear, if we could.

THE COURT: Sure.

MR. SHKOLNIK: The interrogatory and the question and answer we're talking about was not generic other regulatory bodies. Just so it's clear, the question was -- and it's the same question to each defendant. "Has any employee, officer, director, agent, contractor, director, key

opinion leader," which is a term of art, "member of the speakers bureau, advisory board member, or scientific advisor of yours corresponded with or supplied information or data to the EMEA about or in connection with its 2013, quote, assessment report for GLP-1 based therapies, closed quotation. If so, state who the person is."

And to that question the response from Lilly was they further object to it as overly broad, not reasonably calculated to lead to discovery of admissible evidence, and it seeks information regarding regulatory matters not at issue in this litigation.

This was not a -- we did not shoot with a shotgun. We went directly to the document that we heard no less than 50 times about during Science Day over two days and wanted to find out who were the companies?

THE COURT: And they just said they don't feel that that's outside the scope of relevance if -- and so I think you could expect to have some answers with regard to what was supplied or interaction may have led to this study which supports their position.

MR. SHKOLNIK: I just wanted to be clear. The

question we asked was not a general shotgun to agencies.

THE COURT: I didn't expect that it was.

MR. SHKOLNIK: Thank you, Your Honor.

THE COURT: So Mr. Marvin, you want to -- would your answers be any different than Ms. Gussack's in terms of substance?

MR. MARVIN: Just a couple quick points. First on marketing, if the marketing department has -- conducts some kind of study related to safety, whether it was a postmarketing study or whatever kind of study we've been looking for that, and we would continue to look for that, and if there is such a study by marketing about the safety of the product, we'll produce it.

The second point, we have received over 147 document requests, and those requests have countless subparts. When I say "countless," we tried to count up the number of subparts and finally gave up in trying to determine how many subparts there were. Suffice it to say, it was 47 pages of document requests. And if we embark on the road of just going ahead and in normal course and having all kind of productions of millions and millions of pages, various disputes about various issues, we will be

going down a road that's going to take us a lot of time and spending a lot of money without addressing the threshold issue.

And the third point is that -- and we -- we have mentioned this a couple of times, and we continue -- and I want to emphasize it, I guess, is that if there are gaps in our production, we're willing to sit down with the plaintiffs and talk about filling those gaps. If there are targeted requests relating to causation that they want us to explore, we're willing to sit down and discuss it with them. So this is a process, and it's a process that we're willing to cooperate with the plaintiffs in getting this kind of an issue addressed.

THE COURT: Okay. And from Mr. Goetz from Amylin, any difference you want to point out or anything you want to supplement Ms. Gussack was talking about?

MR. GOETZ: No, I agree with Miss Gussack and Mr. Marvin. We don't have any discovery disputes before Judge Dembin right now. What you heard about in deposition last week, I'll tell you, is inaccurate, but I don't think there will be an issue here because there is no issue that's been raised before Judge Dembin. We'll move forward.

I was taken by the fact that the plaintiffs were able to tell Your Honor that they had found a specific person in a study who had been excluded, and that's because of the enormous quantity of documents we've already produced. To bring this home, I'm told by my paralegals if you divide the number of pages produced by 3,000 of about how many boxes have been produced, so you take that 6.5 million pages that Ms. Gussack started out with, that works out to roughly 2,200 boxes of material. So we've gone a long way in this, and so when you ask when will we be done, I hope soon, and I think for general causation, we are on the timeline that Ms. Gussack said, but we've produced so much that you're getting this kind of a granular level from the plaintiffs already in these proceedings.

THE COURT: Okay. And then Ms. Levine.

MS. LEVINE: Yes, thank you, Your Honor.

I agree with everything my colleagues have said, but I'll just add a few points. The Court seems to understand the efficiencies of focusing first on the science and what the defendants want is the sequencing. That's what's really important. We are willing to give plaintiffs the time that they say that they need to deal with the science. We may

disagree to what extent it involves marketing or other issues, but we haven't really had any major discovery disputes.

We're meeting with the plaintiffs this afternoon. We've asked them what they want. We're talking about those issues. We think that once the parties hear from the Court about how the Court wants to sequence the events for discovery and if the Court explains that general causation or science issues come first, then the parties can figure out what that discovery schedule looks like and what needs to be done and prioritize and focus to get the discovery the plaintiffs need in order to put science first.

They have experts lined up, I'm sure. And those experts can tell them what they think they're missing from our files, and we can sit and talk to the plaintiffs very transparently about what we have, what we can produce, and what timeline we can do that.

I think that the discussions from plaintiffs talking about various discovery issues and how to separate science from nonscience is really not at issue.

We do think that that is easily done, and

if not easily done, we're willing to sit at the table. Magistrate Dembin has been very willing to talk to the parties when issues arrive.

I just want to also make a point about the allegations that we're asking the plaintiffs to scorch the earth on their side about plaintiffs' side of discovery. All that we have right now for us to receive information about plaintiffs is the plaintiff fact sheet. Magistrate Dembin has issued an order, an opinion, on that. We're basically just getting the equivalent of written interrogatories and document requests about their medical history, their drug use, their prior medical conditions. There hasn't been depositions of physicians, of their treating doctors, of even the plaintiffs. There have only been a handful of extremis depositions to date, and none of the defendants has rejected a request to undertake those depositions that are requested by the plaintiffs' counsel, so I think there's a -- I just want the Court to understand that we're taking on the burden, a heavy burden. Even if the Court focuses the parties on science, it's still a massive amount of discovery, and we're willing to undertake that. So we need to really figure out the timing as long as the parties

understand the sequencing.

THE COURT: Okay. Well, I do think that we need to direct the -- I guess we'll call it the plaintiffs' discovery to this issue of general causation. And I -- you know, the problem I see is we label things differently. If it's a marketing document, we seem to think that may not be within the limited or more directed scope, but indeed I think it is. I think you need to look at what might -- a document in logic to prove or disprove that the drugs caused or otherwise adversely impacted development of pancreatic cancer in a patient, and whether it comes from the marketing office or the science lab or somewhere else, it's all fair game, as I see it, but I think that we do need to focus on the general causation, get to the point where we get a complete package as of a date certain so we have a static base with which to evaluate both the bona fides of the experts and then, of course, the issue of the day or of the case, and with that in hand we quickly move there to the other issues with regard to representations, misrepresentations to the public, or anything else that goes into the causes of action that have been stated, and then start trying the cases and figure

out what it all means.

So I'm going to order that we phase the case dealing with the general causation issue. No one seems to think we need to split GLP and DPP-4, and so fair enough.

And I do think it's important, and I hadn't thought about it when it was first mentioned, but the plaintiffs are a finite resource, and, unfortunately, if they have the pancreatic cancer, they are -- there's some risk that they may not be here at the end of the day. So I do think that that discovery, limited as it is, should continue as it has so that we have the benefit, not only the defense but the Court ultimately or trier of fact, of the information related to these folks that are afflicted to deal with in an appropriate manner. I think the extremis deposition process needs to continue for that very same reason. We don't want to lose that resource. I mean as I -- if we can get a complete date, I see no reason that we couldn't start the process of designating, and experts disclosing their reports and working information, deposing them, and then setting up a date for Daubert MSJ hearings. It sounds to me like the defense is all going to take it in terms of a joint

approach as opposed to manufacturers or not, but you don't have to make that decision at the moment, but if it's going to be multiple summary judgments, we may have to talk about are we going to hear them all in one day or are we going to break up the argument or whatever, but I don't see any reason we can't be able to go to trial in early 2015 if we get this first lump out of the way. It's going to come up sooner or later, and I think there's great utility in focusing your all efforts in the general sense on this set of science -- this scientific issue that we call general causation. Are the drugs a substantial factor in bringing about pancreatic cancer or accelerate or something else? And that's -- I'm throwing it out. It's a loose definition. You may want to define it yourselves jointly, but I think, you know, I can start setting dates, but it might be useful for you to have your conversations and determine when we can get completion because I don't want experts to have to do Report Number 2 and Report Number 3 because it's a rolling production. My view is we get the record, quote, unquote, complete, the experts stand and deliver on their reports, and undertake the deposition process, and we deal with the motion.

So yes, sir, Mr. Kennerly.

MR. KENNERLY: Yes, Your Honor. The reason I stood up is when we're talking about how to schedule discovery going forward, one of the things we've run into, and they mention there's no motion in front of Judge Dembin. His policy is he has a lot of back and forth between counsel, and I'm not saying it's good or bad, but he has a lot of back and forth between counsel, and when we finally reach an impasse, we're supposed to submit a brief that raises what our issues are going to be, so on and so forth, and the question I have for Your Honor is should we ask Judge Dembin to modify that? Should we ask Your Honor to modify that because if we're trying to move on a streamline schedule, that's going to have a big impact on us because we send out a request, it's going to be minimum 90 days, more like 120 days until there's an actual motion in front of the Court briefed and ready to go, and so that's one of our concerns in that's still going to be there or not.

THE COURT: Well, I imagine -- do both sides share some concern that maybe the current status quo might be slow such that an expedited or more streamlined dispute resolution process would be

helpful?

MS. LEVINE: No, Your Honor. Speaking for Novo -- I think I can speak for all of the defendants -- we don't have the same concern. Magistrate Dembin has had his proverbial door open to us. We've called his chambers when we've had a dispute. He's told the parties if we need expedited, we submit a brief, and briefing is five days for one side and five days for the other. He's ruled very promptly, and if there's any type of emergency issue prior to a deposition or some issue, we have no problem jointly calling the Court and figuring out a process at that time. I think it's premature, and, frankly, Judge Dembin is not here to raise it, so --

THE COURT: But he's doing criminal duty, so he couldn't be.

Let me say this. Had you both agreed, I'd say come up with an expedited plan and we'll go with it. I'll be keeping an eye on things, and if I see there's discovery issues that are languishing for a month or two, I'm not going to sit for that. I'll intervene, and we'll set up an expedited process. So let's see. I mean I think he has every intention of being efficient and timely, and in my view, since

it's my case at the end of the day -- it's your case, but from the Court's perspective, it's my case, if I think it's taking too long, then I'll get involved, and we'll shorten it. You've got that assurance.

MR. KENNERLY: Thank you, Your Honor.

THE COURT: So but that brings us back to the question. I mean do we prophylactically say get discovery complete in 30 days, and then we'll start the process of expert designation and then -- what I would propose we do is we designate and then we disclose in two steps so that nobody gets sandbagged or feels like they're going to need additional time because they haven't anticipated that you were going to need an astrophysicist or something else.

MR. HOERMAN: I believe we're going to need depositions as well. You're contemplating no depositions or custodial files. I think there's a process before the defendants, and, unfortunately, I'd love to go quick if we can, but there's just some things that are going to take time. We'll do our best, but we need to build in enough time.

THE COURT: All I'm saying is if I assumed it was complete in 30 days --

MR. HOERMAN: The written discovery.

THE COURT: I was just talking about the general causation discovery, but don't worry, you'll get time to do what you've got to do, but we have to get to the point where we can define what that date is because otherwise if I start compelling reports off of a best hoped for date, there is -- you're either going to have to push them back or we're going to have to have supplementals that just will bog us all down.

Ms. Gussack.

MS. GUSSACK: Although I don't have the agreement of my colleagues, let me suggest the following: Would it be useful if we took an opportunity -- well, would it be useful to -- if we -- if I'm hearing Your Honor correctly, aim for that we want expert discovery concluded by November, say, and give us an opportunity to work with counsel for the plaintiffs to erect a discovery program that makes sense so that we can have designations and then disclosures leading up to motions by November. I think if you give us the date that we're working backwards from and then allow the parties to meet and confer about what schedule makes sense, we may be able to narrow the disputes. I'm not sure that that's a shared view, but it might help us get

there.

THE COURT: Well, I was thinking about -- I don't hear anybody protesting on the defense side.

From the plaintiffs' side, is that a way to do it?

MR. SHKOLNIK: We're very happy to have an aggressive schedule for discovery. We have had a couple of 30(b)(6) witnesses that have gone nowhere. Depositions. To suggest that we can have full disclosure of experts by November with depositions is a very nice follow-up to the 60 days they originally suggested, but it's almost -- I mean to say it's unreasonable is mild. For us to get discovery from the defendants complete before the end of the year would probably be a Herculean task. I'm being very candid. Even if we're saying science on whatever science is as the defendants want to define it today. Just to get that -- the hardcore discovery, the custodial files and the depositions of the science people, for example, with four defendants, we may want a director of science or medical director. That may be four different witnesses if over a period of time they have replaced that employee. We're going to need the science employees, and we could be talking 20

depositions per party even just on the generic causation issue.

THE COURT: Except keep in mind this isn't state court, so we're not talking about person most knowledgeable. We're talking about a 30(b)(6), which the defense can pick and bring up to speed and doesn't necessarily mean you get the science director 20 years ago. You get someone that knows that information. So make that distinction clearly or keep it clearly in mind that it's not a state court type of a process. It's a 30(b)(6), not a PMK. So to some degree, that request to have every science director over the last ten years is going to fall on deaf ears if I have anything to say about it. It's going to be someone that knows, can testify on behalf of all of those science directors during that period, and that's their obligation to provide, and if they don't, then we deal with that.

But it strikes me that why don't we break it down -- can we break it down -- I'm asking this of the defense -- as to a date to get your disclosures as far as -- your discovery responses, your production, your answers to whatever interrogatories, get those complete, and then -- because you can control that presumably. You know

when you'll have it done. And then from there we can set a period for follow-up depositions through that plaintiffs think are necessary and then we start triggering these other things. I mean I had hoped to get the motions filed by, you know, October, November and heard early in the year and start trying cases, but maybe that's optimistic, and that's the problem where things aren't complete, and so we need to get that. So what if we try the targeted date for the defense to get complete on the written discovery, set aside time for depositions, and let's face it. Even in the best of cases, you do your best to set a schedule, and sometimes stuff happens, and so we have to adjust modestly hopefully, but you might have to, but if we get the document discovery done and we've set up the deposition window, and, of course, the deposition window or even the document discovery is ongoing, we can start saying who the experts are, although you probably already know, and then after we get the discovery in the bag on this, have the reports follow, and when the reports are done and depositions of the experts are done, we can target the filing date for motions. And the problem with setting an end date is it doesn't account for what

we don't know, and these are the -- you're setting it in a prospective fashion, but it's a little closer.

So can the defendants commit individually or collectively where we can get this document discovery complete relative to some -- I guess it's going to take a negotiation as to some point in time where we draw a line in the sand as to -- as of date, and --

MR. HOERMAN: If I may, Judge, oftentimes these take the role of them producing custodians that we've agreed upon, so they might produce six or seven key witnesses that they find are key because we don't know yet who the key witnesses are, and we get those documents, we review those documents. It may end up that those are folks we don't want to depose or need to depose, but after reviewing those documents, we figure out that Joe Smith is in a different department that's critical to our case, and then we order custodial files. So this process of just disclosing documents, I'm a little concerned about it.

THE COURT: But you don't get there until they give you the documents.

MR. HOERMAN: But what we usually do, and if you

look at Novo Nordisk's response to our production request, their response is, "Nothing will be produced until we've sat down and discussed which custodians are going to be produced." They'll then go through their files and figure out -- and do the search terms and then produce to us the documents of those custodians, and then we'll come back and say, "We need these three or four more." That's what's been contemplated in discussion with the defense. I'm sure they'll agree with that. And that process just takes time, and so I'm trying to just be very practical here because I don't want to come back in with a problem four months from now or five months from now because we're just still in the custodial process and not yet through the deposition process. So I think practically speaking, and I know the Court is inclined to try to get this done quickly, the custodial process is in its infancy, and we'll try to push it as fast as we can, but 30 days for production, I'm not sure how it's actually going to work out.

THE COURT: I don't know. That's what I'm asking them about.

MR. MARVIN: If I may make a suggestion with the Court's guidance, I would like motions by October or

November. I think we could sit down with the plaintiffs, now that we know which fork in the road is going to be taken, and develop a schedule that would allow us to meet that target. And that is something that we could sit down with them within the next ten, 20 days and try to work out so that we do have a schedule to meet that target.

THE COURT: Isn't there a discussion between the document requests and the interrogatories and what not and the custodial depositions that the plaintiffs are talking about? Isn't that Step 2 -- at least a two-step process?

MR. MARVIN: Yes, it is.

THE COURT: So I think it's incumbent upon you folks to figure out -- I think you all need to come to collectively a decision where we put some marker in the sand as to a cutoff date for purposes of data, it would seem to me. Otherwise, you're going to have this problem unless there's something major that comes up in this scientific field about this, we're going to have a situation where the experts are trying to pin down a moving target, and so is the Court. So it seems like you should have a working forward date, and the defendants need to get to the point where they can certify where they have

produced all of the responsive documents with regard to these issues, and then you folks can confer. I see no reason that you can't confer and just figure out which custodians or other follow-up witnesses you might need on this basic data, all of which goes to the experts and they do their thing and come up with their reports. So I think you need to follow that format, and I think what drives it in response to the plaintiffs' concerns is when the defense has completed at least with Phase 1 and then you move into Phase 2. Maybe it's a good idea, as Mr. Marvin suggested, to let you talk and revisit this issue in a couple of weeks, and it also may be a good idea that we assume as we set a date for completion we coincide that with a telephonic status conference, check it off, and then realistically reevaluate the next date, and then revisit it, and evaluate the next date to the point that we can say okay. Let's get the expert reports, and then we lock in a briefing and hearing dates, which may or may not fall as the Court and defense seem to have come up with, maybe more like the plaintiff appears will happen or something else entirely.

So from the plaintiffs' perspective, what are your thoughts about doing that, you talk and we

come back in two weeks and at least address completion dates and prospective follow-up discovery on this general causation which I'm defining as relevant evidence on whether or not the drugs cause pancreatic cancer in whole or in part or whatever?

MR. JOHNSON: Your Honor, from the plaintiffs' perspective, I think it's a very workable resolution. And it's got the added benefit of really allowing the defendants to control their schedule, and they can control how fast they get to their ultimate causation hearing by how quickly they comply -- how appropriately they comply with the discovery requests.

THE COURT: Exactly.

MR. JOHNSON: The plaintiffs' perspective, I think it's a very reasonable and workable suggestion.

THE COURT: And maybe my notion of a cutoff date is not realistic for your scientific issue, but it seems to make some sense in the scheme of things, but something to talk about. And I'm not a big one for not having a finite schedule right now, but it seemed like we've got -- we've got to get from the defense a completion date for the document discovery, and then we can set a reasonable period

to do the follow-up discovery, and, you know, once the discovery is in the bag, we can move real quick -- these experts should be -- I'm sure are already evaluating what's out there, and we should be able to get this position to at least get motions on file by year end and maybe heard in January and jump in from there.

So why don't we talk about letting you folks confer and as you are going to do anyway today. In fact, if you want to start when I leave the bench and do it here, you're welcome since you're here, or if there's a better place, go there. And why don't we -- why don't we then set the follow-up -- I suggest the phone since so many of you folks travel, and it hopefully will be concise, but how about something like -- two weeks to the day take us to -- wow. March 11th. How about -- I'm going to be in a big tax trial. How about if we have an 8:30 phone conference on March 11th or some day that week that the -- your relative key people can participate in or if you need to check back with your schedules and call back to Crystal and clear a date, we can do that.

MR. GOETZ: Two weeks is actually March 4. That would work for us.

THE COURT: Oh, March 4. Oh, I'm in a criminal trial that day. Okay. So about 8:30 for the -- for that purpose.

MR. SHKOLNIK: Your Honor, is it possible to have a call-in conference at the end of the day for the Court?

THE COURT: Oh, yeah.

MR. SHKOLNIK: Because for those of us on the East Coast, the 8:30 will be a 5:30 in the morning call. I've been through a number of those. Oh, 10:30.

THE COURT: We'll be having an early lunch. But having said that, I don't mind 4:30 either.

MR. SHKOLNIK: The other way around was fine. My math was wrong.

THE COURT: Either your lunch hour or your cocktail hour.

So enough of the folks on the plaintiffs' side good with March 4 at 8:30?

MR. SHKOLNIK: Yes.

THE COURT: The defense side?

MS. LEVINE: Yes.

THE COURT: Okay. So just to recap, we're going to focus -- we're going to narrow discovery on the plaintiffs' -- of the plaintiffs' discovery as to

the defendants to this issue of general causation as we've tried to create a definition for it. Plaintiffs will continue to respond to the fact sheets and so forth so we don't lose that critical data, and the extremis deposition process will continue, and then in two weeks, we will have a phone conference where hopefully the defense will be able to project its collective complete date and you folks have talked about how we sort of cap the data, whether it is a -- you know, as of date or whatever. I think leaving the potential that something -- there's some scientific breakthrough that might alter that, but so we can lock in that completeness, and then what we'll talk about on the 4th is we'll confirm that you've done all of that, we'll put that date in an order as to completion, we'll target a -- the follow-up discovery issue, this custodial issue that we were talking about, and set another status conference to monitor how that's done, and when we're confident that we have a completion date for that, be prepared to quickly designate your experts, and then thereafter disclose, oppose, and then we'll keep it up for the motions. So we'll set more dates as we get more done so we don't have to revisit the dates, and if there seems to be some logjam with

discovery issues, then we'll be watching the docket and watching those and decide whether or not we need to change the status quo on how we resolve those or not, and I have every confidence Judge Dembin will put his utmost attention to this and move it. And I will -- he'll get wind of all of this by virtue of the order I issue.

So that's the plan at the moment. Is there anything else from the plaintiffs' side? The defense side?

MS. LEVINE: Your Honor, do you want the parties to jointly submit a proposed schedule to you prior to March 4th to discuss it or do you want to discuss the proposals at the hearing?

THE COURT: Well, if you can agree on a schedule, then send it in. If you can't agree, then let's just talk about it. Okay? Because you can tell me in a few words what's in most of that stuff. But it really is -- you guys say we can do it by X, that's what we're looking for, and then from there, other things will fall into place. As the plaintiffs' said, you control a lot now where we get to this ultimate summary judgment issue by getting your ducks in order, and then we'll see how we go with that. But talk -- I mean your talk should

include amongst yourselves your completeness dates and the plaintiffs to be able to be affordably benefit who you think that is, but also what you all anticipate you'll need in this follow-up discovery, whether it's the custodian names or otherwise. And keep in mind what I said about the difference between 30(b)(6) and PMKs, and, you know, we'll continue to give you dates as we get success. I think that's the best way to not have to revisit things.

So anything else on the defense side? How about on the plaintiffs' side?

MR. SHKOLNIK: No, Your Honor.

THE COURT: Well, thank you all very much.

MS. LEVINE: Thank you.

THE COURT: Let us know what the call-in arrangement is and who all anticipates who's going to be on the call. That will assist the reporter. I'll take the bench promptly at 8:30 on the 4th and let the trial wait until we complete that step because we are giving obvious priority to you folks in this major piece of litigation, so thanks very much. Have a good day. We'll talk to you soon. We'll be in recess.

(The proceedings were concluded.)

UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF CALIFORNIA

I, Dana Peabody, CSR No. 6332, an official reporter pro tempore of the United States of America, Southern District of California, hereby certify that I reported in machine shorthand the proceedings had in the above-entitled cause, and that the foregoing transcript is a full, true, and correct transcript of the said proceedings held on February 18, 2014.

Dated at San Diego, California, this 19th day of February, 2014.

/s/ Dana Peabody
_____
Dana Peabody, RDR, CBC, CCP
CSR No. 6332